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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/763,632	01/23/2004	James R. Lawter	ORA5002USACNT1 (J&JO-103U)	7747
27777	7590	10/30/2007	EXAMINER BUMGARNER, MELBA N	
PHILIP S. JOHNSON JOHNSON & JOHNSON ONE JOHNSON & JOHNSON PLAZA NEW BRUNSWICK, NJ 08933-7003			ART UNIT 3732	PAPER NUMBER
			MAIL DATE 10/30/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/763,632

Applicant(s)

LAWTER ET AL.

Examiner

Melba Bumgarner

Art Unit

3732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 22-27 and 36-41 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 22-27 and 36-41 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

### DETAILED ACTION

1. The finality of the rejection of the last Office Action is withdrawn and the indicated allowability of claims is withdrawn. The amendment filed on October 22, 2007 has been entered and the following is the action on the merits.

#### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 22 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brizzolara et al. (5,236,355) in view of Kozam (4,575,375). Brizzolara et al. disclose an apparatus 2 for dispensing material comprising a barrel 10 including a body portion and a tube portion, the tube portion extending from the body portion and including a tip 7; and a plunger 4, at least a portion of the plunger slideably housed within the barrel and a quantity of dry particles 9, at least a portion of the dry particles within the tip; however, they do not show a tip configured for being deformed and the body portion including flexible flanges. Kozam teaches an apparatus for dispensing material to a periodontal pocket including a tip 115 configured for being deformed to at least one different cross-sectional geometry (column 7 line 29) and a body portion including flexible flange 52 for locking engagement with at least a portion of an external force applying member. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the apparatus of Brizzolara et al. to have the tip of Kozam to be able to place the tip at a particular location to dispense the composition, such as the bottom of the

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periodontal pocket, and to have the flexible flange of Kozam to have a snap-fit coupling of the portions in view of Kozam. It would have been obvious to one of ordinary skill in the art at the time the invention was made as to having flanges, as the mere duplication of an element of an apparatus involves only routine skill in the art.

4. Claims 23-26 and 37-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brizzolara et al. in view of Kozam and further in view of Discko, Jr. (5,129,825). The modified apparatus of Brizzolara et al. and Kozam disclose limitations as described above; however, they do not show the body portion including at least one nub. Discko, Jr. teaches an apparatus for dispensing material comprising a body portion including notch 73 for receipt in a correspondingly configured detent 77 in a portion of an external force applying member. It would have been obvious to one of ordinary skill in the art to further modify the apparatus to have the elements of Discko, Jr. in order to positively secure the apparatus to the member in view of Discko, Jr. It would have been obvious to one of ordinary skill in the art as to a nub received in an indent, since the reversal of parts involves only routine skill in the art. Discko, Jr. shows an external force applying member including a handle, sleeve, and spring-loaded shaft (figures 2,3).

5. Claims 27 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brizzolara et al. in view of Kozam and Discko, Jr. and further in view of Haber et al. (5,112,307). The modified apparatus of Brizzolara et al., Kozam and Discko, Jr. disclose limitations as described above; however, they do not show a thumb ring. Haber et al. teach an apparatus comprising the spring-loaded shaft having a thumb ring 28 at the proximal end. It would have been obvious to one of ordinary skill in the art to further modify the apparatus to

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have the ring of Haber et al. in order to manually control the movement of the shaft in view of Haber et al.

***Response to Arguments***


6. Applicant's arguments with respect to the rejected claims have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melba Bumgarner whose telephone number is 571-272-4709. The examiner can normally be reached on Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached at 571-272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Melba Bumgarner  
Primary Examiner